IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2173 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANABHAI ALIAS KANJIBHAI TALSIBHAI SAKARIYA - Appellant(s)
Versus
OWNER OF RIKSHAW NO. GJ-14-T-6669 & 1 - Defendant(s)

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Appearance :
MR HM PRACHCHHAK for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS AVANI S MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 27/02/2007

ORAL JUDGMENT

1. The short grievance that has been made by the appellant is that Motor Accident Claims Tribunal, Amreli

has decided the question regarding liability of the insurance company on an application made under Section 140 of the Motor Vehicles Act, and has exonerated it from satisfying the award. The appellant had sustained injuries, when he was travelling in a rickshaw bearing registration no. GJ-14-T-6669 along with his goods. The rickshaw turned turtle and he sustained injuries. He has, therefore, filed MACP No. 381/1999 before the aforesaid Tribunal. During the pendency of the main proceedings, he submitted an application under Section 140 of the Act. The Tribunal held that the appellant was entitled to receive compensation by way of interim award of Rs.25,000=00 with 12% interest per annum from the date of the application till realization. However, the Tribunal dismissed the application in respect of the insurance company. Hence, this appeal.

2. It is submitted by Mr. Prachchhak learned advocate for the appellant that at the stage of application under Section 140 of the Act, the appellant is only required to establish three factors viz., that the accident had arisen out of use of motor vehicle; secondly the said accident had resulted into permanent disability of the person who was making claim or the death of the person whose legal representative is making

the claim; and thirdly the claim was made against the owner and the insurer of the motor vehicle involved in the accident. He has submitted that the Tribunal could not have gone into the question regarding liability of the insurance company at this stage. He has placed reliance on the decision of the learned Single Judge of this Court in the case of **Mahendrakumar Kalyanjibhai v. Haresh Bipinchandra Pathak & Anr., reported in 1998 (2) GLR pg.1199**. This decision has been rendered on the basis of the earlier decision of the learned Single Judge of this Court in the case of **New India Assurance Co. Ltd., Ahmedabad v. Mithakhan Dinakhan Notiyar & Ors., reported in 1995 (2) GLR. pg.1111**. In the case of Mahendrakumar Kalyanjibhai v. Haresh Bipinchandra Pathak & Anr.(supra) this Court has held as under :-

> “28. In view of the above discussion, I see no reason to take a view different from the view already taken by my esteemed brother J.M. Panchal J. of this Court in the case of New India Assurance Co. Ltd., Ahmedabad v. Mithakhan Dinakhan Notiyar & Ors., [1996 ACJ 155; 1995 (2) GLR. pg.1111] and with which I respectfully agree, that for awarding compensation under Section 140 of the Act, the Claims Tribunal is required to satisfy itself in respect of only the following matters :
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> (i) The accident has arisen out of the use of motor vehicle;
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> (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal

representative is making the claim;

(iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident;
and that the defences raised by the insurer or the owner should be examined later when the claim petition is decided on merits.

29. In the view that I have taken about the scope of inquiry under Section 140 of the Act, it is not necessary to go into the merits of the other defences urged by the learned counsel for the the Insurance Company.

30. In view of the above discussion, the appeals are allowed. Since the Tribunal has already found that the appellant in each of the present group of appeals had suffered from permanent disablement and is entitled to recover compensation in the sum of Rs.25,000=00 with interest @ 12% from the date of the claim petition till the date of payment, from the owner of the vehicle, it is held that respondent no. 2 herein – United India Insurance Co. Ltd., is also liable jointly and severally with the owner of the vehicle to pay amount of Rs.25,000=00 with interest at the rate of 12% from the date of claim petition till the date of payment to each appellant as compensation under Section 140 of the Motor Vehicles Act, 1988.

It is clarified that ultimately, if the Insurance Company succeeds in establishing at the trial of the claim petitions, that it was not liable to indemnify the insured, it shall be entitled to recover the amounts paid to the claimants under this order from the owner of the vehicle."

3. Thus, in both the aforesaid decisions, this Court has clearly laid down that the defence of the insurance company is not required to be looked into at this stage. The insurance is given liberty to recover the amount from the insured, at the end of the main

proceedings, if it is found that its defence was valid. In view of the aforesaid, the decision of the Tribunal, to the extent it exonerates the insurance company from the liability to satisfy the interim award is quashed and set aside. The Insurance Company is now directed to satisfy the award in terms of the award made by the Tribunal. This appeal is allowed with costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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